EXHIBIT "A"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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Columbus Transit LLC,

Employer,

-and -

Case No. 2-RC-23351

Transport Workers Union of Greater New York, AFL-CIO, Local 100,

Petitioner,

- and -

Local 713, International Brotherhood of Trade Unions, IUJAT,

Intervenor

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TWU LOCAL 100'S OPPOSITION TO THE EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

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PRELIMINARY STATEMENT

As the employer concedes, the Board's recent decision in *Dana Corporation*, 351 NLRB 434 (2007), held that,

> [i]n order to achieve a 'finer balance' of interests that better protects employees' free choice, we herein modify the Board's recognition bar doctrine and hold that no election bar will be imposed after a card-based recognition unless . . . 45 days pass from the date of notice without the filing of a valid petition. . . If a valid petition . . . is filed within 45 days of the notice, the petition will be processed. *Id.*

The Employer also concedes that Local 100 filed its election petition within 45 days after the notice posting period began on November 17, 2008. Nevertheless, the Employer asks the Board to overturn the Regional Director's decision to process the petition herein on the basis that it considers the Board's recent Decision in *Dana Corporation* to be wrongly decided. It asks the Board to "reverse[]" *Dana* or, alternatively, to "modify" or "clarify" it consistent with the Employer's misreading of *Carlson Furniture Industries*, 157 NLRB 851 (1966), and its progeny. Contrary to the Employer, the *Carlson* cases directly premise the requirement of a waiver on the existence of a recognition or contract bar. Last, the Employer cannot be heard to object to the Regional Director's Decision and Direction of Election on the basis that it provides that, if Local 713 wins the election, certification will be held in abeyance pending the completion of the unfair labor practice proceeding involving Local 100's 8(a)(2) charges of unlawful assistance and premature recognition of Local 713 against the Employer. Not only was this objection not raised by Local 713, the party impacted by the provision, the purpose of this aspect of the DDE is precisely to address and resolve the concerns raised by the Employer about potentially being put in the "untenable" position of being required to bargain with Local 713 when its relationship could be "disestablished" as a remedy for the pending unfair labor practice charge.

The Employer implicitly concedes that if Local 100 had *not* filed a charge alleging that the Employer improperly assisted and prematurely recognized Local 713, the Region would be fully justified in directing an immediate election. It argues, however, that the filing of an 8(a)(2) charge must in all circumstances block the processing of an election, unless the petitioning Union agrees in advance that it will not further pursue the 8(a)(2) charges if the assisted Union wins the election. Thus, the Employer asks the Board to interpret *Dana* so that an Employer which is not alleged to have violated 8(a)(2) must submit to an election, whereas an Employer which is alleged to have unlawfully assisted and prematurely recognized a minority union must be allowed to benefit from its misconduct by both controlling the timing of an election and mandating the effective withdrawal of the unfair labor practice charge as the price of permitting its employees to exercise their Section 7 rights. This position directly contradicts the Board's intention in *Dana* to modify the recognition and contract bar doctrines to better protect employee free choice, and completely misinterprets *Carlson Furniture* and its progeny, which, contrary to the Employer's argument, directly premise the requirement of a waiver on the existence of a recognition or contract bar.

Accordingly, the Request for Review should be denied immediately, so that the ballots cast by the bargaining unit employees on Friday, March 6 may be promptly counted and their choice regarding representation given prompt effect.

STATEMENT OF FACTS

The following facts are undisputed. Employer Columbus Transportation Services, Inc., is an Employer within the meaning of the Act, engaged in the business of providing paratransit services to New York City. Petitioner Transport Workers Union of Greater New York, AFL-CIO, Local 100 ("Local 100"), and Intervenor Local 713, International Brotherhood of Trade Unions, IUJAT ("Local 713") are labor organizations within the meaning of the Act.

On or about November 10, 2008, the Employer and Local 713 entered into a recognition agreement "whereby they agreed that Intervenor represented a majority of . . . and the Employer recognized it as the exclusive bargaining representative of its drivers." Decision and Direction of Election ("DDE"), at 3.[1] The Employer so notified the Region, which sent an official NLRB notice to the Employer, and the 45 day posting period began on November 17, 2008. On December 22, 2008, Local 100

> . . .timely filed the instant petition and an unfair labor practice charge in Case No. 2-CA-39089, alleging in relevant part that the Employer unlawfully recognized Intervenor as the exclusive collective bargaining representative of its drivers at a time when it did not represent an uncoerced majority and before the Employer hired a representative complement of employees. That charge is currently pending investigation by the Region and, to date, no decision had been made or issued. The Employer and Intervenor have not entered into a collective-bargaining agreement.

Id.

On February 5, 2009, the Regional Director issued her Decision and Direction of Election in this matter. On February 18, 2009, the Region notified the parties that the election will be conducted on Friday, March 6, 2009 at the employer's facility in Mount Vernon, New York. On February 26, 2009, the Employer filed a Request for Review of the Decision and Direction of Election.

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[1] The Employer concedes in its Request for Review that it entered this recognition agreement with Local 713 before it purported to verify Local 713's majority status. Employer's Request for Review, fn. 2.

ARGUMENT

A. As the Employer concedes, *Dana* establishes that there is no recognition bar to an election in this matter.

As set forth above, in the recent case of *Dana Corporation, supra*, the NLRB modified its recognition and contract bar doctrines in order to "better protect[] employees' free choice," holding that

> . . . no election bar will be imposed after a card-based recognition unless . . .45 days pass from the date of notice without the filing of a valid petition. . . If a valid petition . . .is filed within 45 days of the notice, the petition will be processed. 351 NLRB at 434.

It is undisputed that Local 100 filed its election petition within 45 days after the notice posting period began on November 17, 2008. Thus, under the plain and unambiguous language of *Dana*, the Regional Director correctly ordered an election in this matter.[2]

Nevertheless, the Employer asks the Board to overturn the Regional Director's decision to process the petition herein on the basis that it considers the Board's recent Decision in *Dana Corporation* to be wrongly decided. The Employer's desire to overturn this recent decision of the Board does not raise a substantial question of law or policy because of the absence of or departure from reported Board precedent. NLRB Rules and Regulations Section 102.67(c)(1). The employer argues that

> Dana Corp. does not effectuate the purposes of the Act because . . . it potentially allows a union . . .to interfere with the recognition, . . . [which] causes confusion with the employees as to who their bargaining representative is and with the employer on whether to bargain with a union that it has recognized. Request for Review, at 8.

The Employer's argument actually demonstrates why, in the circumstances of this case, *Dana* in fact protects employee free choice: it preserves the employees' right to a secret ballot election to

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[2] As cited by the Regional Director, substantial authority existed even pre-*Dana* for proceeding to an election notwithstanding the pendency of 8(a)(2) charges. *See, e.g., Michigan Bell, 63 NLRB 941 (1945)* and *Columbia* Pictures, 81 NLRB 1313 (1949).

ascertain their actual desires in a situation in which with Employer may have unlawfully entered into a recognition agreement before it hired a substantial and representative complement of unit employees with a Union which did not represent an uncoerced majority.

Nor does the Employer's wish to elevate the expectations of parties which may have entered into an unlawful agreement over the freely expressed desires of the unit employees raise "compelling reasons for the reconsideration of an important Board rule or policy." NLRB Rules and Regulations Section 102.67(c)(4). Indeed, as argued in greater detail in Section C below, it is the Employer's preferred arrangement which would foster confusion by depriving employees of the right to choose a Union which may in fact be preferred by a majority of unit employees simply because the Employer and an assisted union prefer a different outcome. The post-election stability and status of the Employer's relationship with Local 713, the Union it unlawfully assisted, does not outweigh the fundamental purpose of the Act to protect the employees' right to freely choose their bargaining representative. The Board specifically held in *Dana* that employee free choice outweighs concerns about the stability of bargaining relationships such as that raised by the Employer. *Id.*, 351 NLRB at 434. Those concerns are even less compelling here, where there is a substantive allegation of unlawful assistance by the Employer in the establishment of that relationship, than they were in *Dana*. To permit the pendency of the 8(a)(2) charges to delay or deny the employees' right to an election at Columbus Transit would be to permit the Employer to gain from its unlawful conduct by thwarting the employees' legitimate "exercise of their choice on collective bargaining representation through the preferred method of a Board-conducted election." *Id.* It is not for the Employer to decide whether or when employees may exercise their Section 7 rights. Under *Dana*, the "disestablishment" concern raised by counsel for the Employer is not present, as there is no

bargaining relationship to disestablish. The valid election petition extinguishes the recognition bar.

B. As *Carlson Furniture* and its progeny expressly premise the waiver requirement on the existence of a recognition or contract bar, there is no basis to overturn the DDE.

As the Employer concedes, under *Dana*, its recognition of Local 713 does not create a bar to processing the election petition in this case:

> The Board . . . held that if another union files a petition within forty-five (45) days, the union's petition will be processed because the recognition will not be found to be a bar to an election. Request for Review, at 7.

The existence of potential recognition or contract bars was precisely the reason the Board obtained waivers of 8(a)(2) enforcement prior to processing petitions in *Carlson Furniture Industries*, *supra*, and the cases that followed it.

Thus, contrary to the Employer, in the pre-*Dana Carlson Furniture* line of cases the Board's rationale for completing the processing of 8(a)(2) allegations before holding an election unless it received a waiver from the Petitioner was that if the Employer did not violate 8(a)(2), a contract or other bar would prevent an election. *See, e.g.*, *Mistletoe Express Service*, 268 NLRB 1245, 1247 (1984) ("[t]he existing contract between the Employer and the Intervenor may constitute a bar to the representation case proceeding unless the Employer and the Intervenor have engaged in conduct violative of Section 8(a)(1) and (2) and Section 8(b)(1)(A) of the Act"); *Town & Country*, 194 NLRB 1135, 1136 (1972) (". . . the contract between the Employer and the Intervenor constitutes a bar to this proceeding unless the Employer's recognition of the Intervenor . . . was itself . . . in violation of Section 8(a)(2) . . ."); *Carlson Furniture Industries*, 157 NLRB 851, 853 (1966). In fact, in *Town & Country*, *supra*, the Board specifically found that, in "each" of the "cases in which the Board has conducted an election despite the pendency of charges which normally 'block' such an action . . . the contract was removed as a bar." 194

NLRB at 1135. Thus, in each of the *Carlson Furniture* line of cases, it was the existence of a potential contract or recognition bar which prevented the Board from processing a petition unless the petitioning union waived enforcement of 8(a)(2). Here, there is no recognition bar, as the Employer concedes, so no waiver is necessary.

The Employer simply misapprehends the rationale for the *Carlson* decision. There, "the Employer and the Intervenor contend[ed] that their . . .collective bargaining agreement constitutes a bar to the instant petition. . .," 157 NLRB at 852, but the Board found that "an agreement entered into in violation of section 8(a)(2) of the Act is not a bar to a petition." *Id.* However, the Employer had "informed the Board that it [did] not intend to comply with the Board's order" that the Board had issued upon finding that the Employer had violated 8(a)(2). *Id.* at 853. Thus, the reason a waiver was sought and obtained in that case was that there was still a chance that the Court of Appeals could overturn the 8(a)(2) determination, which would have reinstated the contract bar to an election. Under those circumstances, the Board was understandably reluctant to process the petition. *Id.* So the petitioning Union in *Carlson*, in order to proceed promptly to an election without having to wait for the Court of Appeals to rule on the 8(a)(2) issue to learn whether or not a contract bar existed, agreed that if the Intervenor won the election and was certified, no further action would be taken to enforce the Board's 8(a)(2) findings. *Id.* Thus, the purpose of the waiver was to obviate the need for a final determination whether the 8(a)(2) conduct lifted the contract bar before proceeding to an election.[3]

[3] Indeed, the Board found that "the Employer's violation of Section 8(a)(2) is related at least in part to the unresolved question concerning representation" because as long as there was still a possibility that the Court of Appeals could overturn the 8(a)(2) finding, there was still a possibility that a contract bar to an election could be raised. *Id.* at 853. Thus, contrary to the

In short, *Dana*'s removal of the recognition and contract bars to an election in this matter also removes the rationale for a *Carlson*-type waiver.[4] As the Regional Director points out in the DDE, this reading of the cases is consistent with the view stated in the Casehandling Manual that the blocking charge policy is not a *per se* rule; rather, "it is premised solely on the Agency's intention to protect the free choice of employees in the election process." NLRB Casehandling Manual § 11730.

C. The Employer cannot be heard to argue that the DDE should be overturned because the Region resolved its concern about potentially being required to bargain with a Union with which its relationship could be disestablished.

In its post R-hearing brief to the Region arguing that the petition should not be processed, the Employer raised speculative concerns about potentially being required to bargain with Local 713 if Local 713 wins the election and is certified, when 713 could potentially be "disestablished" if the 8(a)(2) charges are ultimately found to have merit. The Employer repeats this assertion several times in its Request for Review, notwithstanding that, in response to the concerns raised by the Employer, the DDE specifically directed that

> [c]ertification will be held in abeyance pending completion of the unfair labor practice proceeding should Intervenor win the election, alleviating the "untenable position" of which the Employer complains – that meaningful bargaining is not possible where the relationship with Intervenor could be disestablished as the remedy of the pending unfair labor practice charge. DDE, at 5.

Thus, there is simply no basis in fact for the Employer's repeated conjuring of the specter that,

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Employer, the existence of a recognition or contract bar is the sense in which an 8(a)(2) charge affects the issue of representation in *Carlson* and related cases.

[4] No basis can be found in any of the cases for the Employer's circular argument that "the predicate for requiring a waiver is whether the petitioning union seeks to proceed with the 8(a)(2) charge." This is simply a restatement of the Employer's wish to be able to deny employees their right to an election simply by entering into an 8(a)(2) agreement. As analysis of *Carlson* and its progeny makes clear, where there is no recognition or contract bar, there is no basis for an Employer to extract the effective withdrawal of an 8(a)(2) charge as the *quid pro quo* for employee exercise of rights already extended by *Dana*.

> [a]bsent a Carlson type waiver the issue of the Company's recognition . . . of Local 713 would remain even after the vote and potentially even after the certification of the election . . . Theoretically, the disestablishment of Local 713 could happen even after the certification of the results of the election . . . Despite the results of the election and even a certification, the Company could be placed in the position of being required to bargain with a union when the issue of the recognition of that union might still be uncertain. Request for Review, at 9-10.

The DDE creates no such uncertainty. Should Local 713 win the election, certification would be held in abeyance pending completion of the unfair labor practice proceeding, and the Employer would be under no obligation to bargain before that time. Should the 8(a)(2) charges be upheld, and a disestablishment remedy ordered, no certification will have issued. Should the 8(a)(2) charges be dismissed or withdrawn, Local 713 would be certified and the Employer would be obligated to bargain with 713. Should Local 100 win the election, it would be certified and the employer would be obligated to bargain with Local 100. Should the employees choose no union, the Employer would have no bargaining obligation. The DDE does not create uncertainty, it resolves it.

Perhaps from the Employer's perspective there is indeed "no reason to have an election now" or ever. But from the employees' perspective, there is every reason to ascertain their wishes now, before the *Dana* window period becomes a distant memory. Under *Dana*, the employees' right to choose their bargaining representative trumps the Employer's wish to protect a stable relationship with an assisted Union or to control the timing of an election.

In fact, the Employer ultimately concedes that the DDE "may resolve the Employer's problems regarding bargaining with Local 713 while the 8(a)(2) charge is pending." Request for Review, at 12. But the Employer goes on to argue on behalf of Local 713 that the Region's determination to meet the Employer's concerns about disestablishment by holding certification in abeyance pending completion of the unfair labor practice proceedings if Local 713 wins the

election means ". . . that employees who may have supported Local 713 may now be less likely to vote for Local 713 and more likely to vote for Local 100 . . ." Request for Review, at 13. This is wrong. All it means is that if Local 713 wins the election, it will be certified if the Employer did not unlawfully assist and enter into a premature minority recognition agreement with it.[5] This straightforward approach will not unfairly impact Local 713's support, it will facilitate employee free choice. The fact that Local 713 itself did not file a Request for Review speaks volumes about the strength of this argument. Had Local 713 wished to raise the argument, it could have done so. It did not, and the employer cannot now be heard to raise the argument on Local 713's behalf.

CONCLUSION

For all the foregoing reasons, Petitioner Local 100 respectfully requests that the Board immediately deny the Employer's Request for Review of the Regional Director's Decision and Direction of Election, so that the valid ballots which will be cast on March 6, 2009 may be promptly counted.

Dated: New York, New York
March 4, 2009

Respectfully Submitted,

/s/ K. Dean Hubbard, Jr.

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[5] Again, the Employer's preferred resolution-- to automatically preclude the employees from voting, even where there is no recognition bar, absent waiver of enforcement of any 8(a)(2) remedy-- flies in the face of *Dana*.

CERTIFICATION OF SERVICE

A copy of Local 100's Opposition to the Employer's Request for Review has been electronically served today to counsel for all other parties as follows:

Hon. Celeste Mattina, Regional Director, NLRB Region 2: region2@nlrb.gov

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Dated: New York, New York
March 4, 2009

/s/ K. Dean Hubbard, Jr.
K. Dean Hubbard, Jr.

EXHIBIT "B"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Columbus Transit LLC,

Employer,

-and -

Case No. 2-RC-23351

Transport Workers Union of Greater New York, AFL-CIO, Local 100,

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TWU LOCAL 100'S OPPOSITION TO THE EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

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PRELIMINARY STATEMENT[1]

The Employer's Request for Review of the Regional Director's Supplemental Decision and Direction of Election ("Supplemental Request") in this case raises no legitimate issues. It seeks only to further delay giving effect to the employees' choice of bargaining representative, by requesting the Board to decide issues that arise only where§ 8(a)(2) charges are pending, even though the § 8(a)(2) charges were withdrawn three weeks before the Employer filed its Supplemental Request.

On March 12, 2009 Local 100 requested and on March 16, 2009 the Regional Director of Region 2 approved withdrawal of Local 100's unfair labor practice charges against the Employer, including its allegations that the Employer violated § 8(a)(2) by prematurely recognizing and improperly assisting Intervenor Local 713, International Brotherhood of Trade Unions, IUJAT ("Local 713").[2] This action removed any possible basis, however implausible, for the Employer to object to counting the ballots herein. Indeed, the Employer's original Request for Review ("Original Request") was premised almost entirely on a misreading of *Carlson Furniture Industries*, 157 NLRB 851 (1966), and its progeny as preventing the processing of election petitions in all cases in which the petitioning Union has filed § 8(a)(2) charges and declines to waive enforcement.[3]

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[1] Local 100's Opposition to the Employer's Request for Review of the Regional Director's Decision and Direction of Election dated March 4, 2009 ("Opposition") is incorporated herein in its entirety by reference.

[2] Thus, the Employer's delaying tactics did have their intended effect of "mandating the effective withdrawal of the unfair labor practice charge as the price of permitting its employees to exercise their Section 7 rights," as predicted by Local 100. Opposition, at 2.

[3] The *Carlson* cases directly premise the requirement of a waiver on the existence of a recognition or contract bar (Opposition, at 6-7), and the Board's recent decision in *Dana Corporation*, 351 NLRB 434 (2007), held that "no election bar will be imposed after a card-based recognition unless . . . 45 days pass from the date of notice without the filing of a valid petition. . . If a valid petition . . . is filed within 45 days of the notice, the petition will be processed." There is no dispute that the petition here was filed within 45 days of the notice. Opposition , at 4.

Therefore, on March 20, 2009 the Region issued a Supplemental Decision and Order ("Supplemental Decision") noting, *inter alia*, that the "withdrawal of the Section 8(a)(2) charge removes any of the questions raised by the petition in the context of a potential taint from conduct unlawful under Section 8(a)(2) of the Act," and ordering "that the ballots be opened at an appropriate time and counted and that thereafter the appropriate certification shall be issued." Supplemental Decision at 2-3.

Nevertheless, the Employer continues to resist the effective exercise by its employees of their Section 7 rights. Notwithstanding that the substantive issues raised in its Original Request were premised on the pendency of § 8(a)(2) charges, in its Supplemental Request the Employer argues not only that the Region should have ignored the obvious fact that the withdrawal of the § 8(a)(2) charges mooted its Original Request, but claims that the Regional Director lacked authority to do anything but ignore the obvious change in facts and circumstances. The Employer is patently wrong in both respects.

The Supplemental Decision removed the weak argument which the Employer raised on behalf of Local 713, the assisted Union,[4] by confirming that the withdrawal of the § 8(a)(2) charge mooted the discussion regarding the need for the certification to be held in abeyance pending the completion of the unfair labor practice proceeding. Supplemental Decision at 2.[5] Moreover, as provided in Rule 102.69(a), the appropriate time to assess the validity of the empty argument that this aspect of the original Decision had any improper impact on the election[6] will

[4] Local 713 filed neither a timely Request for Review nor a Supplemental Request for Review.

[5] Contrary to the Employer's mischaracterization, neither the original nor the Supplemental Decision stated or implied that, "one union can be certified while another cannot," Supplemental Request, at 7. The distinction passionately urged by the Employer between holding certification in abeyance pending resolution of 8(a)(2) charges and conditional certification pending resolution of 8(a)(2) charges is ultimately one without a difference.

[6] This aspect of the decision did not prejudice Local 713 in any way. It was simply a correct statement of the law: If Local 713 wins the election, it will be certified if the Employer did not unlawfully assist and enter into a

be *after* the tally of ballots, in an investigation of Objections filed by Local 713, if it loses the election, and if it believes the facts and law support such objections. The Employer's only substantive argument is not only legally wrong, it is premature.[7]

The Employer's procedural argument is equally baseless. The withdrawal of the 8(a)(2) charges was a major change in the circumstances of the case, and the Regional Director's Supplemental Decision was issued in an effort to ensure that employees would have their ballots counted without undue delay and to avoid denying them the statutory right to a free choice of their bargaining representative. Under the Board's rules and case law, Regional Directors possess broad authority to make determinations and dispositions in Representation cases at *any point* in the proceeding, including the authority to reconsider their decisions in light if change circumstances. *See, e.g., Pentagon Plaza*, 143 NLRB 1280 (1963); *Air La Carte Florida, Inc.*, 212 NLRB 764, 765 n. 5 (1974); National Labor Relations Board Rules and Regulations, Rule 102.67(a).

The Board should therefore promptly deny the Supplemental Request.

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premature minority recognition agreement with it. Moreover, as argued herein, the withdrawal of the 8(a)(2) charge moots even this weak argument.

[7] The Employer also mischaracterizes the Supplemental Decision as ordering "...the opening of the impounded ballots without the Board reviewing the DD&E." Supplemental Request at 2. In fact, the Supplemental Decision ordered "that the ballots be opened at an *appropriate* time and counted . . ." Supplemental Decision, at 2 (emphasis added). Obviously, the phrase "at an appropriate time" contemplates that the ballots will be counted once the Board has made a decision regarding any Request for Review of the Supplemental Decision. Indeed, the sentence ordering the counting of the ballots at an appropriate time ends with a footnote informing the parties of the right to request review of the Supplemental Decision. Supplemental Decision, at 3. No opening or tally of the impounded ballots has been scheduled.

STATEMENT OF FACTS

The following facts are undisputed. Employer Columbus Transportation Services, Inc. (the "Employer"), is an Employer within the meaning of the Act, engaged in the business of providing paratransit services to New York City. Petitioner Transport Workers Union of Greater New York, AFL-CIO, Local 100 ("Local 100"), and Intervenor Local 713, International Brotherhood of Trade Unions, IUJAT ("Local 713") are labor organizations within the meaning of the Act.

On or about November 10, 2008, the Employer and Local 713 entered into a recognition agreement "whereby they agreed that Intervenor represented a majority of . . . and the Employer recognized it as the exclusive bargaining representative of its drivers." Original Decision and Direction of Election ("Original Decision"), at 3. The Employer so notified the Region, which sent an official NLRB notice to the Employer, and the 45 day posting period began on November 17, 2008. On December 22, 2008, Local 100

> . . .timely filed the instant petition and an unfair labor practice charge in Case No. 2-CA-39089, alleging in relevant part that the Employer unlawfully recognized Intervenor as the exclusive collective bargaining representative of its drivers at a time when it did not represent an uncoerced majority and before the Employer hired a representative complement of employees.

Id.

On February 5, 2009, the Regional Director issued her Original Decision in this matter. On February 18, 2009, the Region notified the parties that the election would be conducted on Friday, March 6, 2009 at the employer's facility in Mount Vernon, New York. On February 26, 2009, the Employer filed its original Request for Review of the Decision and Direction of Election ("Original Request"). Following the Original Request, the Regional Director ordered

that the election be held as scheduled on March 6, 2009, but ordered that the ballots be impounded pending a decision by the Board on the Request. The election was held as scheduled on March 6, 2009 and the ballots were impounded.

When the Board had not issued a decision on the Original Request by March 12, 2009, Local 100, in order to assure a prompt determination of the employees' wishes concerning representation, requested withdrawal of its unfair labor practice charges, including its allegations that the Employer violated § 8(a)(2) by prematurely recognizing and improperly assisting Local 713. This request was approved by the Region on March 16, 2009.

On March 20, 2009 the Region issued a Supplemental Decision and Order ("Supplemental Decision") noting, *inter alia*, that

- the "withdrawal of the Section 8(a)(2) charge removes any of the questions raised by the petition in the context of a potential taint from conduct unlawful under Section 8(a)(2) of the Act;" that
- "the discussion regarding the need for certification to be held in abeyance pending completion of the unfair labor practice proceeding should Intervenor win the election, is now moot;" and that
- "the facts and circumstances now did not exist at the time of the issuance of the decision;"

and therefore deciding that

- " the order that only a conditional certification would issue in the event the employees were to vote for the Intervenor is hereby withdrawn;"

and ordering that

- "the ballots be opened at an appropriate time and counted and that thereafter the appropriate certification shall be issued." Supplemental Decision at 2-3.

On April 3, 2009, the Employer filed its Supplemental Request for Review.

ARGUMENT

I. ALL OF THE ISSUES RAISED BY THE EMPLOYER IN ITS ORIGINAL REQUEST WERE MOOTED BY THE SUPPLEMENTAL DECISION.

The Employer's claim in its Supplemental Request that it raised issues in its Original Request that were not predicated on the pendency of the 8(a)(2) charges is belied by a review of the Original Request. There, the employer made two arguments. The first and by far the most important was a misreading of *Carlson Furniture Industries*, 157 NLRB 851 (1966), and its progeny as forbidding the processing of election petitions in all cases in which the petitioning Union has filed § 8(a)(2) charges and declines to waive enforcement, notwithstanding that the Board's decision in *Dana Corporation*, 351 NLRB 434 (2007) had removed the recognition of Local 713 as a bar to the processing of the petition. Original Request, at 6-12.[8] The Employer's request to overturn *Dana* was made in the alternative, ". . . if in fact Dana Corp. modified or eliminated the Board's rule to block elections while a Section 8(a)(2) allegation is pending." *Id.* at 8. The Employer's second, subsidiary and completely speculative argument was that Local 713 would be prejudiced by the Region's decision to hold certification in abeyance pending the outcome of the § 8(a)(2) charges if Local 713 won the election. *Id.* at 12-13. In short, each of the Employer's arguments was premised on the pendency of § 8(a)(2) charges and therefore mooted by their withdrawal.

In its Supplemental Request, the Employer does not challenge and therefore effectively concedes the correctness of the holding of the Supplemental Decision that the withdrawal of the § 8(a)(2) charge mooted the Employer's *Carlson Furniture* argument, the primary argument in

[8] Local 100 demonstrated in its Opposition to the Original Request that the Regional Director's original Decision was correct, as the *Carlson* cases directly premise the requirement of a waiver on the existence of a recognition or contract bar, and the Board's recent decision in *Dana Corporation*, 351 NLRB 434 (2007), held that "no election bar will be imposed after a card-based recognition unless . . . 45 days pass from the date of notice without the filing of a valid petition. . . If a valid petition . . . is filed within 45 days of the notice, the petition will be processed." There is no dispute that the petition here was filed within 45 days of the notice.

its Original Request. Moreover, the Employer implicitly acknowledges that its argument to overturn *Dana* was also rooted in the pendency of the 8(a)(2) charges, as it fails to articulate a single substantive reason for overturning that decision other than its bald desire to do so. Supplemental Request at 7.

The Supplemental Request, in an effort to mislead the Board regarding the impact of the Supplemental Decision, states, "Another issue not mooted is that the Regional Director directed an election in which she stated one union can be certified while another cannot. . . The Supplemental Decision stated that Local 713 cannot be certified." Supplemental Request, at 7. In fact, the Original Decision stated only that "certification will be held in abeyance" pending determination of the 8(a)(2) charges if Local 713 wins the election (Original Decision, at 5), and the Supplemental Decision specifically withdraws the order that only a conditional certification would issue in the event the employees were to vote for the Intervenor. Supplemental Decision, at 2.[9] Thus, the only substantive argument in the Employer's Supplemental Request is moot.

Moreover, this argument has already been shown wrong, and is at best premature. In its initial post-hearing brief, the Employer argued that it could be placed in "an untenable position" of "being required to bargain with a union . . .when it is possible that its relationship with the union could be disestablished." Employer's January 19, 2009 post-hearing letter brief to the Regional Director, at 4. Thus, in the Original Decision, the Regional Director met the Employer's concerns about disestablishment by stating that "certification will be held in abeyance pending completion of the unfair labor practice proceeding should Intervenor win the

[9] The discussion in the Supplemental Decision of the way this issue was addressed in the Original Decision states both that "certification . . . was conditioned on the status of the Intervenor after a determination was made in the unfair labor practice charge," and ". . .certification [was] to be held in abeyance pending completion of the unfair labor practice proceeding." Supplemental Decision, at 2. It is clear that the Acting Regional Director correctly intended these phrases to be synonymous in meaning and effect. The Employer attempts to capitalize on a distinction without a difference.

election, alleviating the 'untenable position' of which the employer complains . . ." Original Decision, at 5. In its Original Request, the Employer conceded that the Original Decision "may resolve the Employer's problems regarding bargaining with Local 713 while the 8(a)(2) charge is pending," but went on to argue on behalf of Local 713 that the Region's determination to meet the Employer's concerns means ". . . that employees who may have supported Local 713 may now be less likely to vote for Local 713 and more likely to vote for Local 100 . . ." Original Request, at 12-13.

Local 100 has already shown this argument to be wrong, even before it was mooted by the Supplemental Decision. All this aspect of the Original Decision meant was that if Local 713 won the election, it would be certified in the event the Employer did not unlawfully assist and enter into a premature minority recognition agreement with it. This straightforward approach, a simple and correct statement of the law, would not have unfairly impacted Local 713's support, it would have facilitated employee free choice. This aspect of the decision did not prejudice Local 713 in any way, and the Employer cannot be heard to argue that a correct statement of the law somehow prejudices another party, especially one which did not itself file a Request for Review. Original Opposition, at 8-10.

Nevertheless, the Supplemental Decision removes even that weak argument, which the Employer raised on behalf of the assisted Union, by confirming that the withdrawal of the § 8(a)(2) charge mooted the discussion regarding the need for the certification to be held in abeyance pending the completion of the unfair labor practice proceeding. Supplemental Decision at 2.

Moreover, as the ballots have not even been counted, it is simply too early to assess the speculative argument (raised without a shred of evidence) that this aspect of the Original

Decision had an improper impact on the election. *If*, once the ballots are counted, Local 713 loses the election, and *if* Local 713 somehow misinterprets the law to argue that this forms the basis to object to the election results, then it may file objections *at that time,* within seven (7) days *after* the tally of ballots, as provided in Rule 102.69(a).[10] In short, the Employer's only substantive argument was wrong when it was raised, is moot now, and is premature as an objection to the election results.

II. THE ACTING REGIONAL DIRECTOR ACTED WELL WITHIN HIS BROAD AUTHORITY IN ISSUING THE SUPPLEMENTAL DECISION.

The Employer's procedural argument is equally baseless. The withdrawal of the 8(a)(2) charges presented a major change in the circumstances of the case, and the Regional Director's Supplemental Decision was correctly issued in light of that change, in an effort to ensure that employees would have their ballots counted without undue delay and to avoid denying them the statutory right to a free choice of their bargaining representative. Supplemental Decision, at 2. Even the Employer concedes that "the withdrawal of the 8(a)(2) charge by Local 100 is a new event." Supplemental Request, at 5.

The Board's rules and case law both make it abundantly clear that Regional Directors possess broad authority to make determinations and dispositions in Representation cases at *any point* in the proceeding, including the authority to reconsider their decisions. *See, e.g., Pentagon Plaza*, 143 NLRB 1280 (1963)(Board has delegated to Regional Directors the same authority as it possesses regarding the cases they decide, including the authority to reconsider decisions); *Air La Carte Florida, Inc.*, 212 NLRB 764, 765 n. 5 (1974) ("Regional Director has full authority to reconsider his decision based upon evaluation of new evidence"). Under Rule 102.67(a), which

[10] Local 100 remains extremely dubious that, if Local 713 loses, it will be able to produce evidence that *any* unit employees both knew about the decision to hold certification in abeyance and did not vote for it this reason, let alone a number of employees sufficient to impact the outcome of the election. But that will be determined in the objections process, if it occurs, not in a ruling on a supplemental Request for Review.

governs "action by the Regional Director," the Regional Director may, "*either* forthwith upon the record *or* after oral argument, the submission of briefs, or further hearing, *as he may deem proper*, . . . determine whether a question concerning representation exists, . . .direct an election, . . . *or make other disposition of the matter*." (Emphasis supplied.) The Employer misinterprets 102.65(e) as implicitly limiting authority which 102.67(a), the rule directly bearing on the authority of the Regional Director to act, provides explicitly. Moreover, the very section of the Case Handling Manual specifically cited by the Employer provides,

> "The filing of a request for review *shall not, unless otherwise ordered by the Board, operate as a stay of any action taken or directed by the Regional Director*, including the direction or conduct of an election, except that the Regional Director, in the absence of a waiver, may not open and count any ballots that may be challenged until the Board has ruled on any request for review that may be filed.

R Case Handling Manual § 11274 (emphasis supplied).

CONCLUSION

For all the foregoing reasons, Petitioner Local 100 respectfully requests that the Board immediately deny the Employer's Supplemental Request, so that the valid ballots which were cast over a month ago may be counted and the employees' wishes regarding representation given prompt effect.

Dated: New York, New York
April 10, 2009

Respectfully Submitted,

/s/ K. Dean Hubbard, Jr.

K. Dean Hubbard, Jr.
Associate General Counsel
Transport Workers Union Local 100
80 West End Avenue
New York, New York 10023

CERTIFICATION OF SERVICE

A copy of Local 100's Opposition to the Employer's Request for Review has been electronically served today to counsel for all other parties as follows:

Hon. Celeste Mattina, Regional Director, NLRB Region 2: region2@nlrb.gov

Stuart Weinberger, Esq., Counsel for the Employer: STUART575@aol.com

Bryan McCarthy, Esq., Counsel for the Intervenor: bcm22@optonline.net

Dated: New York, New York
April 10, 2009

/s/ K. Dean Hubbard, Jr.
K. Dean Hubbard, Jr.

EXHIBIT "C"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

COLUMBUS TRANSIT, LLC,
EMPLOYER

-and-

TRANSPORT WORKERS OF GREATER NEW YORK, LOCAL 100, AFL-CIO,
PETITIONER,

CASE NO.: 2-RC-23351

OBJECTIONS TO ELECTION

-and-

LOCAL 713, INTERNATIONAL BROTHEROOD OF TRADE UNIONS, IUJAT,
INTERVENOR.

Columbus Transit, LLC ("Columbus"), by its attorneys Goldberg and Weinberger LLP, hereby files the following objections to the election held on March 6, 2009:

1. The National Labor Relations Board should not have proceeded with the election since there was a recognition agreement, which barred the petition

2. The National Labor Relations Board should overrule Dana Corporation 351 NLRB 434 (2007), including to allow a recognition agreement to bar a petition.

3. The Regional Director should not have proceeded with the election while the petitioner, Transport Workers of Greater New York, Local 100, AFL-CIO ("Local 100"), had an 8(a)(2) charge pending alleging unlawful recognition and assistance by the Columbus of the intervenor, Local 713, International Brotherhood of Trade Unions, IUJAT ("Local 713").

4. The Regional Director should not have proceeded with the election while said 8(a)(2) charge was pending without obtaining a Carlson waiver.

4. The Regional Director's determination in the Decision and Direction of Election ("DD& E") that Local 100 could be certified if Local 100 won the election while if Local 713 won the election Local 713's certification would be held in abeyance pending the resolution of said 8(a)(2) charge filed by Local 100 precluded a fair and valid election.

5. Local 100 promised and gave benefits to employees, including promising to obtain jobs for employees.

6. Local 100 intimidated, restrained and coerced employees, including, but not limited to, by photographing, recording, and taking videos of employees.

7. Local 100 engaged in conduct to intimidate, restrain and coerce Columbus and the employees including, but not limited, to by trespassing and related conduct and by pressuring Columbus and other entities through picketing and other activities.

8. The National Labor Relations Board had no jurisdiction to issue the Order denying the Request for Review of the DD&E and the Acting Regional Director's Supplemental Decision and Order Directing the Opening and the Counting of the Ballots since the National Labor Relations Board did not have a quorum as required under the National Labor Relations Act, including under Section 3(b).

9. By these and other acts, the conditions necessary to conduct an election were interfered with and destroyed, warranting a new election.

Dated: June 10, 2009

Respectfully submitted,

Stuart Weinberger

Stuart Weinberger
Goldberg and Weinberger LLP
Attorneys for Columbus Transit, LLC
630 Third Avenue, 18th Floor
New York, New York 10017
(212) 867-9595

EXHIBIT "D"

O'CONNOR & MANGAN, P.C.

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By Efile and facsimile (212) 264 2450

June 10, 2009

Celeste Mattina, Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10278-0104

Re: Columbus Transit LLC
Case #: 2-RC-23351

Dear Ms. Mattina:

This office represents Local 713, IBOTU, IUJAT, the intervenor in the above-referenced matter. A Decision and Direction of Election was issued in this matter on February 5, 2009. On or about February 26, 2009, the Employer filed a Request for Review of the DDE. Pursuant to the terms of the DDE, on March 6, 2009, an election by secret ballot was conducted and the ballots impounded. On March 20, a Supplemental Decision and Order was issued and the Employer filed a Request for Review of the Supplement Decision and Order. On April 2, 2009, the Employer filed a Request for Review of the Supplemental Decision and Order. On May 28, 2009, the NLRB denied the Employer's requests to review the Decision and Direction of Election dated February 5, 2009, and the Supplemental Decision and Order dated March 20, 2009. Pursuant to the terms of the Supplemental Decision and Order, the impounded ballots were opened and counted on June 5, 2009.

On behalf of the Intervenor, I hereby file the following objections to the election. It is the position of the Intervenor that the following actions/conduct interfered with the laboratory condition necessary for a free and fair expression of employee choice of collective bargaining representative. For that reason, the Intervenor respectfully requests that the election held on March 6, 2009, be set aside.

1. The conduct alleged in the Complaint issued in case number 2-CA-39193;

2. The Board's failure to require the necessary Carlson waiver petitioner prior to the election;

O'CONNOR & MANGAN, P.C.
ATTORNEYS AT LAW

3. The issuance of the original Decision and Direction of Election dated February 26, 2009, which, in pertinent part provides that if the election is in favor of the Petitioner, the Region will certify Local 100 whereas if the Intervenor were to win certification would be held in abeyance pending a determination concerning the 8(a)(2) charge, which by its very nature is extremely prejudicial to the Intervenor. It is respectfully submitted that the decision, as written, is inherently prejudicial to the Intervenor. The unfortunate wording of the decision clearly exhibits, at the very least, an appearance of partiality on the part of the Region. To make matters worse, the decision, as written, clearly indicates to unit employees that a vote for the Petitioner will result in their obtaining representation sooner rather than later, if at all.

4. Intervenor has objected and continues to object to the processing of the petition herein through and including the counting of the ballots in the face of an outstanding 8(a)(5) charge and in the face of an outstanding 8(a)(5) complaint. No explanation, written or otherwise, for the continued processing of the petition during the pendancy of a Type II charge has ever been given.

5. The Intervenor objects to the issuance of the Supplemental Decision and Order dated March 20, 2009, and the counting of the ballots on June 5, 2009, in view of the charge and complaint referred to in paragraphs 1 and 4 hereof. The withdrawal of the 8(a)(2) charge filed by petitioner does not, as determined by the Region, moot the issue of the charge and the necessity of obtaining a Carlson waiver. The withdrawal of charge and the Supplemental Decision do not ameliorate the deleterious effect of the Decision and Direction of Election, particularly in light of the fact that both occurred subsequent to the ballots being cast.

6. For the reasons stated in *Laurel Baye Health Care of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (CADC 2009), Intervenor objects to the issuance of the Board order dated May 28, 2009, and the further processing of the petition pursuant thereto.

As stated previously, it is the position of the Intervenor that the above described actions/conduct interfered with laboratory conditions necessary for the free expression of employee choice and the election herein should be set aside.

Very truly yours,

Bryan C. McCarthy

O'CONNOR & MANGAN, P.C.
ATTORNEYS AT LAW

cc: Dean Hubbard, Esq. (212) 362-4305
Stuart Weinberger, Esq. (212) 949-1857

EXHIBIT "E"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

---x

Columbus Transit LLC,

Employer,

-and -

Case No. 2-RC-23351

Transport Workers Union of Greater New York, AFL-CIO, Local 100,

Petitioner,

- and -

Local 713, International Brotherhood of Trade Unions, IUJAT,

Intervenor

---x

ANSWER TO OBJECTIONS OF EMPLOYER TO THE ELECTION

K. Dean Hubbard, Jr.
Associate General Counsel
Transport Workers Union of Greater New York,
AFL-CIO, Local 100
80 West End Avenue
New York, New York 10023
(212) 873-6000 ext. 2071

Petitioner Transport Workers Union of Greater New York, AFL-CIO, Local 100 ("Local 100") hereby answers the objections of the Employer to the election held in the above-referenced matter on March 6, 2009 as follows:

1. Local 100 denies the Employer's first objection, and respectfully directs the attention of the Regional Director to the case of *Dana Corporation*, 351 NLRB 434 (2007).

2. Local 100 denies the Employer's second objection, and avers that in the event *Dana* is overruled the ruling will be applied prospectively, thereby affirming the propriety of the Regional Director's decision to proceed with the election in this matter. See *Dana Corporation, supra*, 351 NLRB 434, slip op. at 11, and n. 41.

3. Local 100 denies the Employer's third objection, and respectfully directs the Regional Director's attention to the following documents:

   a. The May 28, 2009 Order of the National Labor Relations Board denying the Employer's Requests for Review of the Regional Director's Decision and Direction of Election and Acting Regional Director's Supplemental Decision and Order Directing the Opening and Counting of Ballots in this matter;

   b. the March 20, 2009 Supplemental Decision and Order of the Acting Regional Director's Directing the Opening and Counting of Ballots in this matter;

   c. the February 5, 2009 Decision and Direction of Election in this matter by the Regional Director;

d. the March 4, 2009 Opposition by Local 100 to the Employer's Request for Review of Decision and Direction of Election in this matter by the Regional Director; and

e. the April 10, 2009 Opposition by Local 100 to the Employer's Request for Review of the Supplemental Decision and Order of the Acting Regional Director's Directing the Opening and Counting of Ballots in this matter.

4. Local 100 denies the Employer's fourth objection, and respectfully directs the Regional Director's attention to the same documents cited in the denial of the Employer's third objection.

5. Local 100 denies the Employer's fifth objection.

6. Local 100 denies the Employer's sixth objection.

7. Local 100 denies the Employer's seventh objection.

8. Local 100 denies the Employer's eighth objection, and respectfully directs the Regional Director's attention to footnote 1 of the May 28, 2009 Order of the National Labor Relations Board denying the Employer's Requests for Review of the Regional Director's Decision and Direction of Election and Acting Regional Director's Supplemental Decision and Order Directing the Opening and Counting of Ballots in this matter.

9. Local 100 denies the Employer's ninth objection.

Dated: New York, New York
July 8, 2009

Respectfully Submitted,

/s/ K. Dean Hubbard, Jr.

K. Dean Hubbard, Jr.
Associate General Counsel
Transport Workers Union Local 100
80 West End Avenue
New York, New York 10023

CERTIFICATION OF SERVICE

A copy of Local 100's **ANSWER TO OBJECTIONS OF EMPLOYER TO THE ELECTION** has been electronically served today to counsel for all other parties as follows:

Hon. Celeste Mattina, Regional Director, NLRB Region 2: region2@nlrb.gov

Stuart Weinberger, Esq., Counsel for the Employer: STUART575@aol.com

Bryan McCarthy, Esq., Counsel for the Intervenor: bcm22@optonline.net

Dated: New York, New York
July 8, 2009

/s/ K. Dean Hubbard, Jr.
K. Dean Hubbard, Jr.

EXHIBIT "F"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

---x

Columbus Transit LLC,

Employer,

-and - Case No. 2-RC-23351

Transport Workers Union of Greater
New York, AFL-CIO, Local 100,

Petitioner,

- and -

Local 713, International Brotherhood of Trade Unions, IUJAT,

Intervenor

---x

ANSWER TO OBJECTIONS OF INTERVENOR TO THE ELECTION

K. Dean Hubbard, Jr.
Associate General Counsel
Transport Workers Union of Greater New York,
AFL-CIO, Local 100
80 West End Avenue
New York, New York 10023
(212) 873-6000 ext. 2071

Petitioner Transport Workers Union of Greater New York, AFL-CIO, Local 100 ("Local 100") hereby answers the objections of the Intervenor to the election held in the above-referenced matter on March 6, 2009 as follows:

1. Local 100 denies the Intervenor's first objection, and respectfully directs the attention of the Regional Director to the case of *Dana Corporation*, 351 NLRB 434, slip op. at 3 (2007), and to the conduct alleged in Case Nos.2-CA-39089, 2-CA-39296, and 2-CA-39337.

2. Local 100 denies the Intervenor's second objection, and respectfully directs the Regional Director's attention to the following documents:

   a. The May 28, 2009 Order of the National Labor Relations Board denying the Employer's Requests for Review of the Regional Director's Decision and Direction of Election and Acting Regional Director's Supplemental Decision and Order Directing the Opening and Counting of Ballots in this matter;

   b. the March 20, 2009 Supplemental Decision and Order of the Acting Regional Director's Directing the Opening and Counting of Ballots in this matter;

   c. the February 5, 2009 Decision and Direction of Election in this matter by the Regional Director;

   d. the March 4, 2009 Opposition by Local 100 to the Employer's Request for Review of Decision and Direction of Election in this matter by the Regional Director; and

   e. the April 10, 2009 Opposition by Local 100 to the Employer's Request for Review of the Supplemental Decision and Order of the Acting Regional Director's Directing the Opening and Counting of Ballots in this matter.

3. Local 100 denies the Intervenor's third objection, and respectfully directs the Regional Director's attention to the same documents cited in the denial of the Intervenor's second objection.

4. Local 100 denies the Intervenor's fourth objection, and respectfully directs the Regional Director's attention to Local 100's denial of Intervenor's first objection.

5. Local 100 denies the Intervenor's fifth objection, and respectfully directs the Regional Director's attention to Local 100's denial of Intervenor's first, second and fourth objections.

6. Local 100 denies the Intervenor's sixth objection, and respectfully directs the Regional Director's attention to footnote 1 of the May 28, 2009 Order of the National Labor Relations Board denying the Employer's Requests for Review of the Regional Director's Decision and Direction of Election and Acting Regional Director's Supplemental Decision and Order Directing the Opening and Counting of Ballots in this matter.

Dated: New York, New York
July 8, 2009

Respectfully Submitted,

/s/ K. Dean Hubbard, Jr.

K. Dean Hubbard, Jr.
Associate General Counsel
Transport Workers Union Local 100
80 West End Avenue
New York, New York 10023

CERTIFICATION OF SERVICE

A copy of Local 100's **ANSWER TO OBJECTIONS OF EMPLOYER TO THE ELECTION** has been electronically served today to counsel for all other parties as follows:

Hon. Celeste Mattina, Regional Director, NLRB Region 2: region2@nlrb.gov

Stuart Weinberger, Esq., Counsel for the Employer: STUART575@aol.com

Bryan McCarthy, Esq., Counsel for the Intervenor: bcm22@optonline.net

Dated: New York, New York
July 8, 2009

/s/ K. Dean Hubbard, Jr.
K. Dean Hubbard, Jr.

EXHIBIT "G"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

COLUMBUS TRANSIT
Employer

and

TRANSPORT WORKERS UNION OF GREATER NEW YORK, LOCAL 100, AFL-CI0
Petitioner

and Case No. 2-RC-23351

LOCAL 713, UNITED BROTHERHOOD OF TRADE UNIONS, IUJAT
Intervenor

AND

COLUMBUS TRANSIT

and Case No. 2-CA-39193

LOCAL 713, UNITED BROTHERHOOD OF TRADE UNIONS, IUJAT

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be, and the same hereby is, rescheduled to August 24, 2010, at 9:30 a.m., and any adjourned date until completed, at 26 Federal Plaza, Room 3614, New York, New York 10278.

Signed at New York, New York
July 23 2010

David E. Leach III, Acting Regional Director
Region 2
National Labor Relations Board

CERTIFICATION OF SERVICE

A copy of Local 100's Opposition to the Employer's Request to Vacate the Board's Decision and Direction of Election and Supplemental Decision and Order has been electronically served today to counsel for all other parties as follows:

Hon. Celeste Mattina, Regional Director, NLRB Region 2: region2@nlrb.gov

Stuart Weinberger, Esq., Counsel for the Employer: STUART575@aol.com

Bryan McCarthy, Esq., Counsel for the Intervenor: bcm22@optonline.net

Dated: New York, New York
August 9, 2010

/s/ Polly J. Halfkenny.
Polly J. Halfkenny.